No. 12226.

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

HELEN YOUNG,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

APPELLEE'S BRIEF.

JAMES M. CARTER,
United States Attorney,

ERNEST A. TOLIN,
Chief Assistant U. S. Attorney,

PAUL FITTING,
Assistant U. S. Attorney.

600 Federal Building, Los Angeles 12,
Attorneys for Appellee.

Parker & Company, Law Printers, Los Angeles. Phone MA. 6-9171.

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Jurisdictional Statement.

Appellant was indicted under Sections 697 and 715 of Title 38 of the United States Code on October 6, 1948 [R. 5-11].[1] The District Court had jurisdiction of the cause under Section 3231 of Title 18 of the United States Code. The offenses charged were committed in Los Angeles County, within the Central Division of the Southern District of California.[2] Judgment was entered on Counts Two through Six of the Indictment, the counts involved in this appeal, on March 28, 1949 [R. 15-18]. Notice of Appeal was filed on March 29, 1949 [R. 18-20]. This Court has jurisdiction under Section 1291 of Title 28 of the United States Code.

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[1]References preceded by the letter "R" are to the printed record on appeal, and those preceded by "AB" are to Appellant's Opening Brief.

[2]The indictment so charged [R. 5-11], and no attack is made on the indictment on this ground.

Statement of the Case.

On October 6, 1948, the Federal Grand Jury at Los Angeles returned an Indictment against appellant Helen Young and another in six counts, which was filed that day in the United States District Court for the Southern District of California, Central Division [R. 2-11]. This appeal involves Helen Young only, and Counts Two through Six of the indictment only, there having been an acquittal as to the other defendant on all counts in which she was named, and an acquittal as to Helen Young on Count One [R. 14]. Each of Counts Two through Six of the Indictment charges Helen Young with knowingly causing a false certificate to be made concerning a claim for benefits under the Servicemen's Readjustment Act of 1944 (38 U. S. C. 694 *et seq.*) by furnishing a bank with false information as to the amount to be paid by a veteran to buy a lot and to build a house thereon, and by causing the bank to certify in a Home Loan Report presented to the United States Veterans Administration that the veteran was paying the false amount and that such amount did not exceed a proper appraisal made by an appraiser designated by the Administrator of Veterans Affairs, whereas, as appellant knew, such figures were false and the true amount did exceed such appraisal.

Appellant's motion to dismiss the indictment for failure to state facts sufficient to constitute an offense was denied on November 5, 1948 [R. 12-13], and appellant pleaded not guilty [R. 13-14]. At the trial, appellant moved for a judgment of acquittal at the end of the Government's case, on the ground, among others, that the Indictment did not charge an offense, which motion was denied [R. 23-26]. The motion was renewed, and again denied, at

the close of all the testimony [R. 27]. Appellant also objected to the instruction to the jury relating to Section 715 of Title 38, one of the statutes on which the Indictment was founded, but the instruction was given [R. 27-30]. Appellant was found guilty by a jury on March 3, 1949, on Counts Two through Six [R. 14].

On March 28, 1949, appellant was sentenced to imprisonment for one year and fined $1000 on each of Counts Two through Six, execution thereof being suspended and appellant placed on probation for five years, the conditions of which were that appellant should make restitution of $3200 to certain named veterans, pay a fine of $2000, and comply with all laws and with the rules of the Probation Office [R. 15-18].

Statutes and Regulations Involved.

(a) Penal Statutes.

Section 1500(a) of the Servicemen's Readjustment Act of 1944—popularly known as the G. I. Bill of Rights—provides (38 U. S. C. 697(a)):

> "Except as otherwise provided in this chapter, the administrative, definitive, and penal provisions under sections 30a and 485 of Title 5 and sections 701-703, 704, 705, 706, 707-710, 712-715, 717, 718, 720, and 721 of this title, and the provisions of sections 450, 451, 454a and 556a of this title, shall be for application under this chapter.[3] For the purpose of carry-

[3]The exact language of this sentence as enacted was (58 Stat. 300):

"Except as otherwise provided in this Act, the administrative, definitive, and penal provisions under Public, Numbered 2, Seventy-third Congress, as amended, and the provisions of Public, Numbered 262, Seventy-fourth Congress, as amended (38 U. S. C. 450, 451, 454a and 556a), shall be for application under this Act."

ing out any of the provisions of sections 30a and 485 of Title 5 and sections 701-703, 704, 705, 706, 707-710, 712-715, 717, 718, 720, and 721 of this title, and this chapter, the Administrator shall have authority to accept uncompensated services, and to enter into contracts or agreements with private or public agencies, or persons, for necessary services, including personal services, as he may deem practicable."

Section 715 of Title 38 provides:[4]

"Any person who shall knowingly make or cause to be made, or conspire, combine, aid, or assist in, agree to, arrange for, or in any wise procure the making or presentation of a false or fraudulent affidavit, declaration, certificate, statement, voucher, or paper, or writing purporting to be such, concerning any claim for benefits under sections 701-703, 704, 705, 706, 707-715, 716-721 of this title, and sections 30a, 485 of Title 5, shall forfeit all rights, claims, and benefits under such sections, and, in addition to any and all other penalties imposed by law, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than $1,000 or imprisonment for not more than one year, or both."

(b) Other Statutory Provisions.

The provisions of the Servicemen's Readjustment Act of 1944 relating to loans to veterans for the purchase of real estate are in Title III of the Act (38 U. S. C.

[4]Enacted as Sec. 15 of Public, Numbered 2, Seventy-third Congress (48 Stat. 8, 11).

694, 694a-k; 58 Stat. 291-293, as amended by 59 Stat. 626-631). Under that Title, the United States, through the Administrator of Veterans Affairs, will guarantee, within certain limits, loans made to veterans of World War II for purchasing or constructing dwellings to be occupied as their homes. As to the requirements the loan must meet, Section 501 provides, in part (38 U. S. C. 694a):

> "Any loan made to a veteran under this subchapter, the proceeds of which are to be used for purchasing residential property or constructing a dwelling to be occupied as his home or for the purpose of making repairs, alterations, or improvements in property owned by him and occupied as his home, is automatically guaranteed if made pursuant to the provisions of this subchapter, including the following:
>
> . . .
>
> "(3) That the price paid or to be paid by the veteran for such property or for the cost of construction, repairs, or alterations does not exceed the reasonable value thereof as determined by proper appraisal made by an appraiser designated by the Administrator."

Section 504 (38 U. S. C. 694d) gives the Administrator the power to promulgate necessary and appropriate rules and regulations for carrying out the provisions of the statute.

(c) Regulations.

Regulations under the Servicemen's Readjustment Act of 1944 were promulgated by the Administrator (11 F. R. 2118-2126). Section 36:4336 of such regulations provides (11 F. R. 2124):

> "No loan is guaranteeable or insurable the proceeds of which have been expended or will be expended for property, or for construction, alterations, repairs or improvements, the purchase price or cost of which is in excess of the reasonable value of the same as determined by a proper appraisal made by an appraiser designated by the Administrator."

And Section 36:4303(c) provides, in part (11 F. R. 2120):

> "Evidence of automatic guaranty or of insurance will be issuable if the loan is reported to the Administrator within 30 days following full disbursement, and upon the certification of the lender that:
>
> (i) The loan has been made in full accordance with the terms and provisions of the act."

Statement of Facts.

The present appeal involves no question of fact.

ARGUMENT.

I.

Introduction.

The sole question on appeal in this case is whether the indictment states an offense, appellant contending that Section 1500 (38 U. S. C. 697) of the Servicemen's Readjustment Act of 1944 is ineffective to make it a criminal offense to knowingly cause a false certificate to be made concerning a claim for benefits under the Act (A. B. 3, 7-8). Appellant contends that Section 1500 is ineffective to incorporate into the Servicemen's Readjustment Act by reference Section 715 of Title 38, and that there is no other penal provision in the Act.

The Government contends that Section 715 is validly incorporated into the Servicemen's Readjustment Act by inexpert but adequate language, and that the practical effect of Section 1500 is to amend Section 715 so that it prohibits the use of false papers "concerning any claim for benefits under the Servicemen's Readjustment Act of 1944."

Section 1500 provides (38 U. S. C. 697):

> "Except as otherwise provided in this chapter, the administrative, definitive, and penal provisions under sections . . . 715 . . . of this title . . . shall be for application under this chapter . . ."

II.

Section 1500 (38 U. S. C. 697) Is a Valid Penal Statute.

1. District Court Decisions.

The only reported case squarely in point is *U. S. v. Oakland,* 81 F. S. 343 (W. D. La. 1948). Defendants there moved to dismiss an information brought under Section 697 of Title 38 that charged the defendant with falsely stating the purchase price of a home in an application for a Home Loan Guaranty. Defendant asserted that the information "does not set forth or allege the commissions of an offense against the United States . . . ," in that the statutes under which it was laid "are so vague and indefinite, fail to set forth a comprehensible, intelligent, definitely ascertainable standard of criminal responsibility" and are also unconstitutional under the 5th and 6th amendments. After quoting Section 715 of Title 38, Chief Judge Dawkins said (81 F. S. 344):

> "Whatever may be said as to other offenses under the Act of June 22, 1944, a false statement of the character charged in the bill clearly falls under and only under the last quoted statute, which, in effect, is made part of the said World War II Veterans Act of June 22, 1944. It deals entirely with false statements or representations made to any agency or department of the Government in the prosecution of a claim for money, property, or other benefits. See Panama Railroad Co. v. Johnson, 264 U. S. 375, 44 S. Ct. 391, 68 L. Ed. 748, and also United States v. Gilliland, 312 U. S. 86, 61 S. Ct. 518, 85 L. Ed. 598.
>
> "It is not believed necessary to discuss at length the principles and juprisprudence on the question of the adoption of provisions of earlier statutes by sub-

sequent acts of Congress. It suffices to say that I believe there can be no confusion or doubt about the applicability of the law in the manner stated in the present case."

In this circuit, Judge Yankwich had the same problem before him in *U. S. v. Selph,* 82 F. S. 56, 58 (S. D. Calif., Jan. 27, 1949). That case also involved a motion to dismiss an indictment charging the making of a false statement under these statutes. In his written opinion, Judge Yankwich stated briefly (82 F. S. 56, 58):

> "Section 715 of Title 38 U. S. C. A., punishes both him who knowingly makes or *causes* to be made, and him *who aids or assists in,* or procures the making or presentation of, the false or fraudulent statement or writing denounced. Section 697 of Title 38 makes the section applicable to claims under the Servicemen's Readjustment Act of 1944, 38 U. S. C. A. §697."

In oral remarks supplementing this written opinion, Judge Yankwich said, in part [Rep. Tr. Jan. 27, 1949, p. 10):

> "However, the Congress may constitutionally adopt sections contained in other acts, and may in one penal statute make applicable to an event which occurs at a later date the penalties of the pre-existing statute, and I think that Sec. 697, although inexpertly drawn, achieves this purpose. The section says:
>
> " 'Except as otherwise provided in this chapter, the administrative, definitive, and penal provisions under Sections 30a and 485 of Title 5, and Sections . . . 712-715 of this title, . . . shall be for application under this chapter.'

"What they say, in rather an awkward way, is that they shall apply under this chapter, and it is quite evident that they intend to apply, all the administrative rights and remedies and definitions, and they use definitive in the sense of final. They specifically designate penal provisions, and I believe if they had left out penal provisions in the chapter, they would have brought all the chapter into play.

"By referring to Sections 712-714, I believe it leaves no room for doubt that what they intended to do was to apply these sections to instruments to be prepared under the Veterans Act, so as to apply the pre-existing statute to the new situation which has arisen by reason of the passage of the Veterans Act."

The same ruling has been made in each case in which the question has been raised in the Southern District of California.[1]

The valid incorporation by Section 697 of Title 38 of non-penal provisions of the statutes enumerated therein has apparently been assumed without question in *Slocumb v. Gray,* 82 F. S. 125, 126 (Dist. of Col. 1949), and *International Union v. Bradley,* 75 F. S. 394, 396 (Dist. of Col. 1948).

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[1]*United States v. Theodore,* No. 19981, 9/24/48, Judge Peirson M. Hall.

United States v. Selph, No. 20023, 9/24/48, Judge Peirson M. Hall.

United States v. Branum, No. 20337, 11/8/48, Judge Peirson M. Hall.

United States v. Karrell, No. 20365, 1/14, 18/49, Judge Wm. C. Mathes. [See Rep. Tr. pp. 388-404, 431, 507-8, 519.] This case is presently before this court on appeal as *Karrell v. United States,* No. 12199.

United States v. Selph, No. 20657, 6/6/49, Judge Jacob Weinberger.

2. The Congressional Intent Was to Incorporate Such Penal Statutes.

A reading of the legislative history of the Servicemen's Readjustment Act of 1944 demonstrates the Congressional intent to integrate that Act with the existing Federal legislation on veterans' benefits in order to provide for a uniform system of administration and sanctions. An explanation of the purpose of Section 1500 is found in Senate Report No. 755, 78th Congress, 2nd Session (Senate Report 78-2, Volume 3-59), wherein it is stated:

> "Section 1600[1] makes applicable to all the titles of the act, except as otherwise provided therein, the administrative, definitive, or penal provisions of Public Law 2, Seventy-third Congress. This integrates the entire act with the system of benefits initiated under and authorized by said Public Law 2, act of March 20, 1933, and the Veterans Regulations issued thereunder as subsequently amended by statutory enactment. Among other things it makes applicable the definition of the term 'person who served' as including any person, male or female, commissioned, enlisted, enrolled, or drafted, who served in any of the armed forces of the United States, including the Army, Navy, Marine Corps, Coast Guard, or any of the components thereof. Likewise it will make applicable the provisions of section 5, Public Law 2, concerning the finality of decisions of the Administrator, except as otherwise provided, but it would not carry forfeiture for fraud under title V inasmuch as the penalties for fraud under said title are specifically provided in section 1400."[2]

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[1]Now Section 1500 (38 U. S. C. 697).

[2]Now Section 1301 (38 U. S. C. 696*l*).

This shows clearly that the Congressional intent was to carry over into the Servicemen's Readjustment Act both the administrative and penal provisions of Public Law 2.

3. The Authorities on Incorporation by Reference Support the Above Rulings of the District Courts.

At the outset it should be noted that Section 715, standing by itself, states a crime definitely enough. In essence it states a crime similar to that outlined in Section 80 of Title 18 (1946 Ed.), but limits the crime to false statements concerning certain claims for benefits. This is a sufficient delineation of a crime, and the statute is not invalid because of indefiniteness. *Cf. U. S. v. Gilliland,* 312 U. S. 86, 91 (1941).

It is the Government's contention that Section 715 is incorporated into the Servicemen's Readjustment Act, and that in practical effect this incorporation makes Section 715 read "concerning any claim for benefits under the Servicemen's Readjustment Act of 1944." It would have been better had Congress so expressly amended the statute, but the method followed sets forth a crime with sufficient definiteness.

(a) Incorporation by Reference Generally.

Incorporation by reference is a not uncommon practice in federal legislation. The Supreme Court early stated in *Kendall v. United States,* 12 Pet. (37 U. S.) 524, 625 (1838):

> "It was not an uncommon course of legislation in the states, at an early day, to adopt, by reference, British statutes; and this has been the course of legislation by congress in many instances where state practice and state process has been adopted."

See, also, Chief Justice Marshall in *Gibbons v. Ogden,* 22 U. S. (9 Wheat) 1, 207-208 (1824). In many states constitutional provisions now prohibit these legislative shortcuts, but there is no such federal prohibition. Hence, there can be no objection to incorporation by reference, as such.

(b) Incorporating a Limited Statute.

One difficulty raised in the present case is that Section 715 is limited on its face to claims for benefits under specific statutes, and this enumeration does not include the Servicemen's Readjustment Act of 1944, which was enacted eleven years after Section 715. However, the clear intent of Congress was to make Section 715 applicable to the Servicemen's Readjustment Act.

In *Alton Railroad Co. v. United States,* 315 U. S. 15, 18-20 (1942), question was raised of the rights of certain railroads to bring suit to set aside the granting of a certificate of convenience and necessity as a common carrier by motor vehicle to one Fleming. The court stated (315 U. S. 19):

> ". . . They rest their right to sue on §205(h) of the Motor Carrier Act (49 U. S. C. Supp. §305(h) which provides that 'Any final order made under this part shall be subject to the same right of relief in court by any party in interest as is now provided in respect to orders of the Commission made under part I . . .' Sec. 1(20) of Part I (49 U. S. C. §1(20) authorizes 'any party in interest' to sue to enjoin any construction, operation or abandonment of a railroad made contrary to §1(18) or (19). Such suits may be maintained not only where the railroad proceeds without authorization of the Commission, but

> also where it proceeds under a certificate of the Commission whose validity is challenged. *Claiborne-Annapolis Ferry Co. v. United States,* 285 U. S. 382. Hence, we conclude that §205(h) has incorporated by reference the 'party in interest' provision of §1(20) . . ."

It is to be noted that Section 1(20) of Part I, which was incorporated into the Motor Carrier Act, applied on its face only to suits concerning railroads. See, also, *Panama Railroad Co. v. Johnson,* 264 U. S. 375, 391-392 (1924), and *Engel v. Davenport,* 271 U. S. 33, 38-39 (1926), arising under the Merchant Marine Act of 1920, which provided:

> "That any seaman who shall suffer personal injury in the course of his employment may, at his election, maintain an action for damages at law, with the right of trial by jury, and in such action all statutes of the United States modifying or extending the common-law right or remedy in cases of personal injury to railway employees shall apply; and in case of the death of any seaman as a result of any such personal injury the personal representative of such seaman may maintain an action for damages at law with the right of trial by jury, and in such action all statutes of the United States conferring or regulating the right of action for death in the case of railway employees shall be applicable . . ."

A somewhat similar case is *The Brazil,* 134 F. 2d 929 (C. C. A. 7, 1943). A libel for forfeiture of a vessel because of sale to an alien was brought under Section 836 of Title 46 (Shipping), which provided that forfeitures "may be disposed of in the same manner, as forfeitures incurred for offenses against the law relating to

the collection of duties." The Customs Act (Section 1621 of Title 19, Customs Duties) provided that "No suit or action to recover any pecuniary penalty or forfeiture of property accruing under the customs law . . ." shall be instituted except within five years of discovery of the offense. The court applied these provisions of the Customs Act, finding that to be the clear intent of Congress. It should be noted that the statute thus incorporated was limited on its face to "forfeiture of property accruing under the customs law," and that the statute incorporating it did so generally, and not by specific citation. A similar result was reached in this Circuit with little discussion in *The Tahoma,* 87 F. 2d 349, 354 (C. C. A. 9, 1936) involving substantially the same statutes, in reliance on a series of prior decisions in the First Circuit.

(c) Incorporating Criminal Statutes.

While it is true that the cases cited above deal with statutes which are not criminal, criminal statutes have been incorporated by reference. The most extreme example is the Assimilative Crimes Act (18 U. S. C. 13). That statute makes criminal any act or omission committed in certain places within the special jurisdiction of the United States, if such act or omission is a crime by the law of the state in which such place is situated, although such act or omission is not made a crime by Congressional enactment. This statute thus incorporates into federal law state statutes generally, without specifying them by any citation whatever. See, also, Section 1114 of Title 18, which, though in language only incorporating the punishment imposed in Sections 1111 and 1112 of Title 18, in fact must incorporate most of their substantive provisions so that the punishment can be fixed.

The constitutionality of the Assimilative Crimes Act has long been settled by *Franklin v. United States,* 216 U. S. 559, 568-570 (1910). That statute raises many problems not present under Section 697. Under the Assimilative Crimes Act, not only must state law be consulted to see if a crime has been committed, but a very difficult question sometimes arises as to whether a federal criminal statute precluded prosecution under the State statute defining a slightly different crime. *Cf. Williams v. United States,* 327 U. S. 711 (1946). The time of enactment or amendment of the state statutes is always important, in that only those state statutes are imported into federal law that were in existence when the Assimilative Crimes Act, or its latest amendment, was passed. *United States v. Paul,* 6 Pet. (31 U. S.) 141 (1932). See, also Frankfurter, dissenting, in *Johnson v. Yellow Cab Co.,* 321 U. S. 383, 398-399 (1944). No such problem is presented here, because Section 715 was in the Code when 697 was enacted, and has not been amended since.

A guide to the degree of vagueness permissible in criminal statutes incorporating other statutes is furnished by *United States v. Stafoff,* 260 U. S. 477, 479-480 (1923). A prior decision of the Supreme Court had held that certain criminal provisions relating to the making of alcoholic beverages in violation of Internal Revenue requirements had been repealed by the National Prohibition Act. Congress thereupon passed an Act supplemental to the National Prohibition Act providing that "all laws in regard to the manufacture and taxation of and traffic in intoxicat-

ing liquor, and all penalties for violations of such laws that were in force when the National Prohibition Act was enacted, shall be and continue in force, as to both beverage and non-beverage liquor, except such provisions of such laws as are directly in conflict with any provisions of the National Prohibition Act or of this Act." In discussing this new statute, Mr. Justice Holmes said (260 U. S. 480):

> "But the Supplemental Act that we have quoted puts a new face upon later dealings. From the time that it went into effect it had the same operation as if instead of saying that the laws referred to shall continue in force it had enacted them in terms. The form of words is not material when Congress manifests its will that certain rules shall govern henceforth. *Swigart v. Baker,* 229 U. S. 187, 198 . . ."

It should be noted that this Supplemental Act referred vaguely to a body of statute law, without identifying the specific statutes involved, and further, that once such statutes should be identified, there would be the further question of whether they were directly in conflict with the National Prohibition Act or the Supplemental Act itself. This lack of specific identification should be contrasted with the direct citation of the statutes incorporated in the present case. It is true that the words of incorporation—"shall be for application"—could be improved upon, but the will of Congress is manifest, and the form of words is hence not material. Hence, it is a criminal offense under Sections 697 and 715 of Title 38 to knowingly cause a false certificate to be made concerning a claim for benefits under the Servicemen's Readjustment Act of 1944.

III.

The Other Points Raised by Appellant Are Not Valid.

Appellant raises two additional points as to the sufficiency of the indictment under the statute. She says that the penalty of Section 715 of Title 38 applies only to veterans (A. B. 13), and that the presence of a specific penal section in another part of the Servicemen's Readjustment Act shows that Congress meant no criminal penalties under the loan provisions (A. B. 12).

As to the first, appellant cites Section 715, which provides that "any person" who does certain acts "shall forfeit all rights, claims, and benefits under such sections, and, in addition to any and all other penalties imposed by law, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than $1,000 or imprisonment for not more than one year, or both." Appellant argues that the forfeiture of rights clause shows that Section 715 applies only to veterans. But, Section 715 says "any person"—not "any veteran" or "any person eligible to benefits under the act." The crime defined in Section 715 quite obviously is one which a non-veteran is capable of committing. The forfeiture of rights is a common clause, but it does not require, in the face of the broad "any person" language, that a person have rights to violate the statute.

The fact that there is an express penal clause (Sec. 1301, 38 U. S. C. 696*l*) in Title V of the Servicemen's Readjustment Act, dealing with Employment Readjustment Allowances, and no special penal clause in Title III, dealing with loans, does not mean, as appellant argues, that Congress meant to impose no criminal penalties

as to loans. Section 1500 is in Title VI of the original act, and that title, the last one of the act, begins as follows (58 Stat. 300):

"TITLE VI.

CHAPTER XV.—GENERAL ADMINISTRATIVE AND PENAL PROVISIONS.

Sec. 1500. Except as otherwise provided in this Act . . ."

The final title is the logical position for a general penal provision applying to the entire Act, and that is where Section 1500 was put.

The true explanation for Section 1301 (38 U. S. C. 696*l*) is that, in connection with Employment Readjustment Allowance under Title V, the veteran was to deal directly with the local State agency instead of the Federal Government. The question might arise as to whether a false statement made to a State agency would constitute a criminal offense under Section 715, even though the Federal Government reimbursed the State agency for the funds it disbursed. To obviate this possible technical objection, Congress provided a specific criminal penalty for false representations in connection with claims for allowances under Title V. It must be borne in mind that in writing Title V Congress was attempting to coordinate this title with existing State legislation relating to unemployment compensation. See also, the last sentence of the excerpt quoted at page 11 above from Senate Report No. 755. Thus, appellant's argument as to this section is without merit.

Conclusion.

The Indictment in this case charges an offense against the United States, and Section 1500 of the Servicemen's Readjustment Act of 1944 (38 U. S. C. 697) and Section 715 of Title 38 are adequate to define a criminal offense. The Government, therefore, respectfully urges that the judgment of conviction be affirmed.

Respectfully submitted,

James M. Carter,
United States Attorney,

Ernest A. Tolin,
Chief Assistant U. S. Attorney,

Paul Fitting,
Assistant U. S. Attorney.

Attorneys for Appellee.